IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 7793 OF 2004

Shantilal Jivraj Sundechamutha ... Petitioner

Vs.

Shri. Vijaukumar Jivraj Sundechamutha
and Ors. ...Respondents

Mr. A.A. Kumbhakoni with Mr. A.P. Kulkarni for
Petitioner.

Mr. J.S. Shekhar for Respondent Nkos. 1 to 3.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 17, 2005

P.C.

. The contention of the petitioner who was defendant No. 1 is that summons were not served within the time contemplated by Order 9 rule 5 and in these circumstances, the learned court in not dismissing the suit has failed to exercise jurisdiction vested in it in Law and or otherwise in setting aside the order of dismissal discloses error of law apparent on the face of record. The learned counsel has placed reliance on the two judgments of the learned Judge of this Court in the case of Vishwanath Satwaji Gaikwad Vs. Laxman Abaji Kavale and Ors. 2000 (4) Mh.L.J. 498 and in the case of Devidas Ganpatrao Kulkarni Vs. Upendrarao Madhavrao Dhopeshwarkar and another, 2001

(Supp.2) Bom.C.R. 412. It is submitted that considering that the order setting aside the dismissal of the suit against defendant No. 1 bet set aside.

. The Petition was filed on 1.9.2004. Roznama would show that on 4.7.2001 the name amongst others of defendant No. 1 was deleted. Thereafter an application was taken out for setting aside the order of dismissal of which notice was issued on 4.8.2003. Notices were issued on 12.8.2003. On 15.9.2003 defendant No. 1 sought time to file reply. On 3.10.2003 the order of dismissal was set aside. Thereafter on 18.3.2004 roznama records would show that the written statement filed by defendant No. 1 who is petitioner herein was taken on record. The issues were recast on 20.4.2004. The evidence commenced on 15.7.2004. The Petition thereafter was filed only on 1.9.2004.

. Considering the above facts and as petitioner herein applied for filing written statement and written statement was taken on record, in my opinion, the arguments advanced on behalf of the petitioner that the suit ought to have been dismissed on failure to serve summons need not be gone into in the exercise of the extra

ordinary jurisdiction of this court. For the above said reasons, no interference is called for with the impugned order. Petition dismissed. C.C. expedited.

(F.I. REBELLO,J.)